

UNITED STATES DISTRICT COURT  
THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION

CLERKS OFFICE U.S. DIST. COURT  
AT DANVILLE, VA  
FILED  
JAN 22 2020  
JULIA C. DUDLEY, CLERK  
BY: s/ MARTHA L. HUPP  
DEPUTY CLERK

UNITED STATES OF AMERICA )  
 )  
v. ) Court No. 4:20-cv-00008  
 )  
BERETTA, PIETRO S.P.A 950B PISTOL CAL: 22 )  
SN:OBLITERATED AND THREE ROUNDS OF )  
AMMUNITION )

**VERIFIED COMPLAINT FOR FORFEITURE *IN REM***

Now comes the plaintiff, United States of America, by and through its attorney, Krista Consiglio Frith, Assistant United States Attorney, and brings this Complaint and alleges as follows in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure:

**NATURE OF THE ACTION**

1. This is a civil action *in rem* brought to forfeit and condemn certain personal property assets to the use and benefit of the United States, pursuant to 18 U.S.C. § 924(d), as authorized by 18 U.S.C. § 2461(c), for violations of 18 U.S.C. § 922(g)(1).

**THE DEFENDANTS *IN REM***

2. The defendant property consists of the following property:

(a) One Beretta, Pietro S.P.A 950B Pistol CAL:22 SN:Obliterated and three rounds of .22 caliber ammunition that was seized from Brian Walter Martin on April 22, 2019 at the following location: 1411 Askin Street, Martinsville, VA 24112, and is presently in the custody of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) at Roanoke, Virginia Field Office Vault.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over an action commenced by the United States under

28 U.S.C. § 1345, and over an action for forfeiture under 28 U.S.C. § 1355(a).

4. This Court has *in rem* jurisdiction over the defendant property under 28 U.S.C. § 1355(b).

5. Venue is proper in this district pursuant to 28 U.S.C. §1355(b)(1) because the acts giving rise to this forfeiture occurred in this district. Venue is also proper pursuant to 28 U.S.C. § 1395 because the property is located in this district.

6. Upon the filing of this Complaint, the plaintiff requests that the Clerk of Court issue a Warrant of Arrest *in rem* pursuant to Supplemental Rule G(3)(b)(i), which the plaintiff will execute upon the property pursuant to 28 U.S.C. § 1355(d) and Supplemental Rule G(3)(c).

#### BASIS FOR FORFEITURE

7. The defendant property is subject to forfeiture pursuant to 18 U.S.C. § 924(d), as authorized by 18 U.S.C. § 2461(c), as property which was involved or used or possessed in violation of 18 U.S.C. § 922(g)(1).

#### FACTS

8. The facts supporting this Complaint are stated in the attached Declaration of Task Force Officer Jonathan G. Cox, ATF, and are incorporated by reference herein.

WHEREFORE, the United States of America respectfully requests that the Clerk of Court issue a Warrant of Arrest *in rem* pursuant to Supplemental Rule G(3)(b); that due notice be given to all parties to appear and show cause why the forfeiture should not be decreed; that judgment be entered declaring the defendant property to be condemned and forfeited to the United States of America for disposition according to law; and that the United States of America be granted such

other and further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

THOMAS T. CULLEN  
United States Attorney


/s/ Krista Consiglio Frith  
Assistant United States Attorney  
Virginia Bar No. 89088  
310 First Street, S.W., Room 906  
Roanoke, VA 24011  
Phone: (540)857-2250  
Fax: (540)857-2614  
krista.frith@usdoj.gov

VERIFICATION

I am a Task Force Officer of the ATF, and one of the agents assigned the responsibility for the above-captioned matter. I have read the contents of the foregoing Complaint for Forfeiture, and the statements contained therein are true to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 21st day of January, 2020.

  
Jonathan G. Cox  
Task Force Officer, ATF

**UNITED STATES DISTRICT COURT  
THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION**

UNITED STATES OF AMERICA	)	
	)	
v.	)	Court No. 4:20-cv-00008
	)	
BERETTA, PIETRO S.P.A 950B PISTOL	)	
CAL: 22 SN:OBLITERATED AND	)	
THREE ROUNDS OF AMMUNITION	)	

**AFFIDAVIT IN SUPPORT OF FORFEITURE *IN REM***

I, Jonathan G. Cox, a Task Force Officer (TFO) with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), being duly sworn, state as follows:

**BACKGROUND AND EXPERIENCE**

1. I am a Task Force Officer (TFO) with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and have been employed since 2017. I am currently assigned to the ATF Roanoke Field Office, Washington Field Division. I have been employed with the Martinsville City Police Department (MPD) since January 2013 and assigned to their Special Investigation Unit (SIU) since January 2017. In my capacity as a law enforcement officer, I have investigated individuals for the illegal possession and use of firearms, illegal possession and distribution of controlled substances, and for committing violent crimes. Many of these investigations led to the arrest and conviction of individuals for violations of both state and federal firearms and drug trafficking laws.

2. This affidavit is based on my personal knowledge, information conveyed to me by other law enforcement officers, and my review of evidence, documents, and records obtained during the course of the investigation. This affidavit only contains the information necessary to



establish probable cause. As such, this affidavit does not include each and every fact known by me or known by the government.

3. As set forth in detail below, the Subject Property is forfeitable under 18 U.S.C. § 924(d) because they were in possession of Brian Walter MARTIN, in violation of 18 U.S.C. § 922(g)(1).

### **THE INVESTIGATION**

4. On April 22, 2019, Martinsville City Police Department (MPD) responded to a call for service at 1411 Askin Street, Martinsville, VA 24112, in the Western District of Virginia. The caller stated that a black male tried to force his way inside the residence and was still on the property. MPD officers came in contact with Brian Walter MARTIN, a convicted felon in the front yard of the residence. During contact with MARTIN officers observed an odor of alcohol coming from MARTIN's person, blood shot eyes and unsteady on his feet. Officers conducted a pat down on MARTIN and located a Beretta, Model 950B, .22 caliber pistol with an obliterated serial number and containing three (3) rounds of ammunition.

5. MARTIN was subsequently arrested for possession of firearm by a convicted felon, obstruction of justice, altered serial or identification number, possession of marijuana and drunk in public (DIP). As MARTIN is a previous convicted felon, his possession of this firearm was in violation of Title 18 U.S.C. 922(g)(1). On November 20, 2019, this Court issued a Judgment of Acquittal (ECF No. 137) as to the charges filed against Martin in Case Number 4:18CR00035.

**CONCLUSION**

6. Based upon your affiant's knowledge of the investigation, the circumstances surrounding the seizure, your affiant believes that MARTIN possessed a firearm and ammunition. As such, your affiant submits that MARTIN violated 18 U.S.C. § 922(g)(1) and the subject firearm and ammunition are subject to forfeiture pursuant to 18 U.S.C. § 924(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 21<sup>st</sup> day of January 2020.



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Jonathan G. Cox  
ATF Task Force Officer (TFO)  
Bureau of Alcohol, Tobacco, Firearms and  
Explosives

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
United States(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)  
Krista Consiglio Frith, AUSA  
310 First Street, S.W., Room 906  
Roanoke, VA 24011, (540)857-2250**DEFENDANTS**BERETTA, PIETRO S.P.A 950B PISTOL CAL: 22 SN:OBLITERATED  
AND THREE ROUNDS OF AMMUNITIONCounty of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input checked="" type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 18 U.S.C. § 924(d), as authorized by 18 U.S.C. § 2461(c)  
 Brief description of cause:  
 Civil Forfeiture

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
**DEMAND \$**
 CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☐ Yes ☐ No
**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Dillon

DOCKET NUMBER 4:18CR00035

DATE  
01/22/2020SIGNATURE OF ATTORNEY OF RECORD  
s/Krista Consiglio Frith**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_